

SARITA KEDIA

LAW OFFICES, P.C.

5 EAST 22ND STREET, SUITE 7B
NEW YORK, NEW YORK 10010
WWW.KEDIALAW.COM

INFO@KEDIALAW.COM

TEL: 212.681.0202

FAX: 212.614.0202

November 19, 2010

BY ECF AND BY HAND

Honorable Sandra L. Townes
United States District Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Michael Persico, 10 Cr. 147 (SLT)

Dear Judge Townes:

We respectfully submit a chart of time stamps corresponding to the approximate start and end times of the portions of the new recordings excerpted in Mr. Persico's October 12, 2010, and November 12, 2010, letters in support of his bail modification application, as well as the location in the submissions where each excerpt is cited. We provided to the Court by hand yesterday a compact disc containing the recordings.

<u>Date of recording</u>	<u>Time Stamp</u>	<u>Location in Defense Letters Where Excerpt Is Cited</u>
Sept. 24, 2009	14:47-15:00	Oct. 12 Ltr., Page 7
Dec. 1, 2009	1:18:34-1:18:50	Oct. 12 Ltr., Pages 4-5
Dec. 1, 2009	1:29:12-1:29:21	Oct. 12 Ltr., Page 5
Jan. 6, 2010	9:07-9:10 14:45-15:42	Oct. 12 Ltr., Page 5
Jan. 22, 2010	1:08:20-1:08:24	Oct. 12 Ltr., Page 5

Honorable Sandra L. Townes
 United States District Judge
 November 19, 2010
 Page 2

<u>Date of recording</u>	<u>Time Stamp</u>	<u>Location in Defense Letters Where Excerpt Is Cited</u>
Jan. 22, 2010	1:09:21-1:09:30	Oct. 12 Ltr., Pages 3, 6
Jan. 27, 2010	1:24:58-1:25:09	Nov. 12 Ltr., Page 4
Feb. 11, 2010	15:57-16:12	Oct. 12 Ltr., Pages 3-4
Feb. 15, 2010	2:05:30-2:05:33	Oct. 12 Ltr., Page 7

We also respectfully submit to the Court a compact disc with one additional recording that significantly undermines the government's extortion charge. In this recording, Frank Leone, Sr., whom the government claims was extorted by Mr. Persico, is heard describing Mr. Persico's nature to the government's cooperating witness, Steven Marcus. Mr. Leone says this:

And I'll tell you something else with all the kids. If Michael sees that they could do or they could control and they can handle, he'd be there with everything. That's the type of kid he is. He'd give 'em everything.... The kid wants to help everyone. He's the breadwinner. He's the breadwinner. U/I breadwinner. And another thing, you can't keep taking from the well all the time. I mean, I went last night and I paid the tab. I mean, not that it's a big shot, but I paid the tab. But you want to know something, *this kid is so good to me.*

April 21, 2009 Rec., 3:14-3:35; 8:58-9:17. It is clear from this recording that Mr. Leone and Mr. Persico were close friends and that Mr. Leone was neither intimidated by, nor fearful of, Mr. Persico, but rather viewed Mr. Persico as "the type of kid" who "wants to help everyone." Indeed, far from threatening him, Mr. Leone explains that Mr. Persico has been "so good to [him]." Thus, the government's extortion charge is plainly wrong. See United States v. Melicharek, 360 Fed.Appx. 223, 226 (2d Cir. 2010) (citing United States v. Curcio, 759 F.2d 237, 241 (2d Cir. 1985)) ("[B]ecause extortion under the Hobbs Act is defined as 'the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear,' 18 U.S.C. § 1951(b)(2), [the alleged victim's] state of mind [i]s an aspect of the charged crime.").

Respectfully submitted,
 /s/
 Sarita Kedia
 Paul Shechtman

cc: Amy Busa
 Michael Tremonte
 Assistant U.S. Attorneys